

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-7728

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

TYRONE GLEATON,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Aiken. Cameron McGowan Currie, District Judge. (CR-01-871; CA-04-1537)

Submitted: November 22, 2005

Decided: December 1, 2005

Before MOTZ, TRAXLER, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Tyrone Gleaton, Appellant Pro Se. William Kenneth Witherspoon, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Tyrone Gleaton, a federal prisoner, seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (2000) motion. An appeal may not be taken from the final order in a habeas corpus proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of his constitutional claims is debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001). We have independently reviewed the record and conclude that Gleaton has not made the requisite showing.

Gleaton's claim of error under Blakely v. Washington, 542 U.S. 296 (2004), is unavailing because neither Blakely nor United States v. Booker, 125 S. Ct. 738 (2005) (holding that Blakely applies to federal sentencing guidelines), is available for post-conviction relief for a federal prisoner whose conviction was final before either of those cases was decided. United States v. Morris, ___ F.3d ___, 2005 WL 2950 (4th Cir. Nov. 7, 2005).

Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED